

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Tom Kane
Patricia Kane

NOTICE OF HEARING AND
MOTION FOR RELIEF FROM
AUTOMATIC STAY

Debtors

Chapter 13, Case No. 04-30782

TO: Tom Kane and Patricia Kane, INCLUDING TRUSTEE AND OTHER INTERESTED
PARTIES

1. Chase Manhattan Mortgage Corporation, (*Movant*), a corporation, by its undersigned attorneys, moves the Court for the relief requested below and gives notice of hearing herewith.

2. The Court will hold a hearing on this motion at 10:30 am on September 20, 2004, in Courtroom 228B, 300 South Fourth Street, Minneapolis, MN 55415 or as soon thereafter as counsel can be heard.

3. Any response to this motion must be filed and delivered not later than on September 15, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays, and holidays), or filed and served by mail not later than September 9, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays and holidays). UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.

4. This court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, Federal Rules of Bankruptcy Procedure 5005 and Local Rule 1070-1, and is a core

proceeding. The petition commencing this Chapter 13 case was filed on February 12, 2004. The case is now pending in this court.

5. This motion arises under 11 U.S.C. § 362 and Federal Rules of Bankruptcy Procedure 4001. This motion is filed under Federal Rules of Bankruptcy Procedure 9014 and Local Rules 1201-1215. Movant requests relief with respect to a mortgage lien encumbering real property of Debtors.

6. Debtors above-named are the owners of certain real property located at 1315 Marthaler Lane, Saint Paul, MN 55118, legally described as follows, to-wit:

Parcel 1, Torrens the Southerly Five feet (S'ly 5") of Lot Four (4), Block Four (4), Oakdale 2nd, Parcel 2, Abstract Lot 5, Block 4, Oakdale 2nd Addition, Dakota County, Minnesota.

7. The indebtedness of Tom Kane and Patricia Kane is evidenced by a Promissory Note and Mortgage dated May 2, 2003, filed for registration in the Dakota Registrar of Titles' office on May 10, 2004, and memorialized as Document No. 533105 on Certificate of Title No. 113563 and recorded in the Dakota County Records Office as Document No. 2202818. A true and correct copy of the front page of the recorded mortgage is attached as Exhibit A.

8. Movant has filed a Proof of Claim for delinquent payments for the months of December 1, 2003 through February 1, 2004. Upon information and belief, said Plan has now been confirmed.

9. Pursuant to said Plan, the Debtors were to maintain monthly payments due and payable pursuant to the indebtedness to Movant outside the Plan.

10. The Debtors have failed to pay the monthly payments on the indebtedness, outside the Plan for the months of June 1, 2004 to the present date and as of the hearing date

September 1, 2004 will be due for a total delinquency of \$5,800.60 together with reasonable attorneys fees and costs incurred pursuant to the terms of the note and mortgage.

11. By reason of the foregoing, Debtors are in default on payments under the note, mortgage and the Chapter 13 Plan. Movant is inadequately secured and entitled to have the automatic stay lifted and vacated so it can commence foreclosure against the property under the mortgage pursuant to Minnesota Statutes.

WHEREFORE, Movant by its undersigned attorney, moves the Court for an Order that the automatic stay provided by 11 U.S.C. Section 362 (A) be terminated to permit Movant to foreclose its mortgage on the subject property, and for such other and further relief as may be just and equitable.

Dated: September 7, 2004

USSET & WEINGARDEN P.L.L.P

By: /E/ Paul A. Weingarden/Brian H. Liebo
Paul A. Weingarden, #115356
Brian H. Liebo #277654
Attorney for Movant
4500 Park Glen Road, #120
Minneapolis, MN 55416
(952) 925-6888

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Tom Kane
Patricia Kane

AFFIDAVIT OF PETITIONER

Debtors

Chapter 13, Case No. 04-30782

STATE OF California)

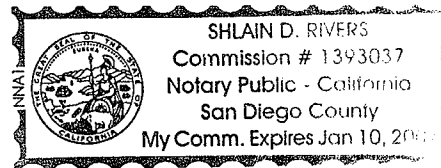
COUNTY OF San Diego)

Robin Williams, being first duly sworn, deposes and states on oath that she/he is employed by Chase Manhattan Mortgage Corporation, the movant in this action, that she/he has read the annexed Notice of Hearing and Motion for Relief From Automatic Stay, and that it is true of her/his knowledge to the best of her/his information.

Robin Williams

Subscribed and sworn to before me this
17 day of August, 2004.

Shlain D. Rivers
Notary Public



DOC. NO. 0533105

OFFICE OF THE COUNTY REGISTRAR OF TITLES
DAKOTA COUNTY, MINNESOTA
CERTIFIED THAT THE WITHIN INSTRUMENT
WAS RECORDED IN THIS OFFICE ON AND AT

2003 MAR 24 A 9:00

CERTIFICATE NO. 113503
JOEL T. BECKHAM, REGISTRAR OF TITLES

BY: *JB* Deputy
FEE \$500 SURCHARGE

ASSURANCE FUND
NON-ASSUR MISC FEE ☒

CASH ☐ CHECK ☐ ESCROW ☒

WELL ☐ CHARGE ☐

CHARGE TO: O/R
DO NOT REMOVE

#113503
Ancona Title Serv

2188282

DAKOTA COUNTY TREASURER-AUDITOR
87/02/2003 08:26:17 791528
REGISTRATION TAX 368.00
COUNTY CONSERVATION FEE 5.00
RECEIPT NUMBER 602368

[Space Above This Line For Recording Data]

MORTGAGE

Return To:
First Franklin Financial Corporation
2150 North First Street
San Jose, CA 95131
Loan number: 0030755110/5,516

This loan is being made pursuant to section 47.204 of the Minnesota Statutes.

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated May 2, 2003 together with all Riders to this document.

RECEIVED

JUN 11 2003

DAKOTA COUNTY Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT
TREASURER-AUDITOR

Form 3024 1/01

VMP -6(MN) (0005)

Page 1 of 15

Initials: *J.P.K. PDK*

VMP MORTGAGE FORMS - (800)521-7291



Document # L074MN

(B) "Borrower" is
TOM P. KANE AKA Thomas P. Kane
, and PATRICIA A. KANE, husband and wife

Borrower is the mortgagor under this Security Instrument.

(C) "Lender" is FIRST FRANKLIN FINANCIAL CORPORATION

Lender is a Corporation
organized and existing under the laws of Delaware
Lender's address is 2150 North First St.,
San Jose, CA 95131

Lender is the mortgagee under this Security Instrument.

(D) "Note" means the promissory note signed by Borrower and dated May 2, 2003

The Note states that Borrower owes Lender

ONE HUNDRED SIXTY THOUSAND & 00/100

Dollars

(U.S. \$ 160,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic
Payments and to pay the debt in full not later than June First, 2033

(E) "Property" means the property that is described below under the heading "Transfer of Rights in the
Property."

(F) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges
due under the Note, and all sums due under this Security Instrument, plus interest.

(G) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following
Riders are to be executed by Borrower [check box as applicable]:

<input checked="" type="checkbox"/> Adjustable Rate Rider	<input type="checkbox"/> Condominium Rider	<input type="checkbox"/> Second Home Rider
<input type="checkbox"/> Balloon Rider	<input type="checkbox"/> Planned Unit Development Rider	<input type="checkbox"/> 1-4 Family Rider
<input type="checkbox"/> VA Rider	<input type="checkbox"/> Biweekly Payment Rider	<input checked="" type="checkbox"/> Other(s) [specify] Prepayment Rider

(H) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations,
ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final,
non-appealable judicial opinions.

(I) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other
charges that are imposed on Borrower or the Property by a condominium association, homeowners
association or similar organization.

(J) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by
check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic
instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit
or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller
machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse
transfers.

(K) "Escrow Items" means those items that are described in Section 3.

(L) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(M) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(N) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(O) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(P) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to Lender and Lender's successors and assigns, with power of sale, the following described property located in the county [Type of Recording Jurisdiction]

of Dakota

[Name of Recording Jurisdiction]:

Legal Description attached hereto and made a part hereof

Adjustable Rate Rider attached hereto and made a part hereof

Prepayment Rider attached hereto and made a part hereof

Parcel ID Number: 425370105104
1315 MARTHALER LANE
ST. PAUL
("Property Address"):

which currently has the address of [Street]
[City], Minnesota 55118 [Zip Code]

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

22. Acceleration; Remedies. Lender shall give notice to Borrower by certified mail to the address of the Property or another address designated by Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke the power of sale and any other remedies permitted by Applicable Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees.

If Lender invokes the power of sale, Lender shall cause a copy of a notice of sale to be served upon any person in possession of the Property. Lender shall publish a notice of sale, and the Property shall be sold at public auction in the manner prescribed by Applicable Law. Lender or its designee may purchase the Property at any sale. The proceeds of the sale shall be applied in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it.

23. Release. Upon payment of all sums secured by this Security Instrument, Lender shall discharge this Security Instrument. Borrower shall pay any recordation costs. Lender may charge Borrower a fee for releasing this Security Instrument, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under Applicable Law.

24. Waiver of Homestead. Borrower waives all right of homestead exemption in the Property.

25. Interest on Advances. The interest rate on advances made by Lender under this Security Instrument shall not exceed the maximum rate allowed by Applicable Law.

Exhibit A

Legal Description:

PARCEL 1 TORRENS THE SOUTHERLY FIVE FEET (S'LY 5") OF LOT FOUR (4), BLOCK FOUR
(4), OAKDALE 2ND

PARCEL 2 ABSTRACT LOT 5, BLOCK 4, OAKDALE 2ND ADDITION

DAKOTA COUNTY MN

L081

CPK

FORM HP004

transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.

To the extent permitted by applicable law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption. Lender may also require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing.

If Lender exercises the option to require immediate payment in full, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is delivered or mailed within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Adjustable Rate Rider

<u>Tom P. Kane</u> (Seal) TOM P. KANE -Borrower	<u>Patricia A. Kane</u> (Seal) PATRICIA A. KANE -Borrower
____ (Seal) ____ -Borrower	____ (Seal) ____ -Borrower
____ (Seal) Non -Borrower	____ (Seal) Non -Borrower
____ (Seal) ____ -Borrower	____ (Seal) ____ -Borrower

EF-6268008 (9710)

Page 3 of 3

DELIVER TO TORENS

Document # L392X

DOC. NO. 2188282	
OFFICE OF THE COUNTY RECORDER DAKOTA COUNTY, MINNESOTA CERTIFIED THAT THE WITHIN INSTRUMENT WAS RECORDED IN THIS OFFICE ON AND AT 2004 MAR 24 AM 9:00	
JOEL T. BECKMAN, COUNTY RECORDER	
BY: <u>DB</u> Deputy	
FEE <u>30.00</u> SURCHARGE <u>5.00</u>	
CASH <input type="checkbox"/>	CHECK <input checked="" type="checkbox"/>
ESCROW <input type="checkbox"/>	
WELL <input type="checkbox"/> CHARGE <input type="checkbox"/>	
CHARGE TO <u>Quonoma Lido</u>	
O/R _____	

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Tom Kane
Patricia Kane

MEMORANDUM OF LAW

Debtors

Chapter 13, Case No. 04-30782

11 U.S.C. Section 362(d) provides that on request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under section (a) of this section for cause, including lack of adequate protection of an interest in property of such party in interest. Failure of a Chapter 13 debtor to make postconfirmation payments to a mortgagee is sufficient cause for relief from the automatic stay. Reinbold vs. Dewey County Bank, 942 F.2d 1304 (8th Cir. 1991). Following the debtors' filing of the petition on February 12, 2004 no payment has been made to movant for the month(s) of June 1, 2004 to the present and as of the hearing date September 1, 2004 will be due. Accordingly, cause exists for the granting of relief from the automatic stay.

WHEREFORE, Chase Manhattan Mortgage Corporation respectfully requests this Court to grant movant relief from the automatic stay of 11 U.S.C. Section 362(a).

Dated: September 7, 2004. USSET & WEINGARDEN P.L.L.P

By: /E/ Paul A. Weingarden/Brian H. Liebo
Paul A. Weingarden, #115356
Brian H. Liebo #277654
Attorney for Movant
4500 Park Glen Road, #120
Minneapolis, MN 55416
(952) 925-6888

U.S. BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Tom Kane
Patricia Kane

Debtors

UNSWORN DECLARATION
FOR PROOF OF SERVICE

Chapter 13, Case No. 04-30782

Erin Kay Buss, employed on this date by USSET & WEINGARDEN, attorney(s) licensed to practice law in this court, with office address of Suite 120, 4500 Park Glen Road, Minneapolis, Minnesota 55416, upon penalty of perjury, declares that on September 7, 2004, I served the annexed Notice of Hearing and Motion for Relief from Automatic Stay upon each of the entities named below by mailing to them a copy thereof by enclosing same in an envelope with first class mail postage prepaid and depositing same in the post office at Minneapolis, Minnesota, addressed to each of them as follows:

Office of the United States Trustee
1015 U.S. Courthouse
300 South Fourth Street
Minneapolis, MN 55415

Jasmine Z. Keller
Chapter 13 Trustee
310 Plymouth Building
12 South 6th Street
Minneapolis, MN 55402

Robert J Everhart
Attorney at Law
PO Box 120534
New Brighton, MN 55112

Tom Kane
Patricia Kane
1315 Marthaler Lane
Saint Paul, MN 55118

/E/ Erin Kay Buss
Erin Kay Buss

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Tom Kane
Patricia Kane

ORDER

Debtors.

Chapter 13, Case No. 04-30782

The above entitled matter came on for hearing upon motion of Chase Manhattan Mortgage Corporation, (*Movant*) pursuant to 11 U.S.C. Section 362 on September 20, 2004 at the U.S. Bankruptcy Court, Minneapolis, Minnesota. Appearances were as noted in the record. Based upon the evidence adduced at said hearing, the arguments of counsel, and the Court being fully advised of the premises,

IT IS HEREBY ORDERED THAT:

The automatic stay imposed by 11 U.S.C. §362 is hereby terminated as to the real property over which the Movant, its successors or assigns, has an interest, said property legally described as:

Parcel 1, Torrens the Southerly Five feet (S'ly 5") of Lot Four (4), Block Four (4), Oakdale 2nd, Parcel 2, Abstract Lot 5, Block 4, Oakdale 2nd Addition, Dakota County, Minnesota.

Movant may proceed to foreclose its mortgage in accordance with Minnesota Statutes. Movant's request for attorneys fees and costs shall not be considered as this is governed by state law. Notwithstanding Federal Rules of Bankruptcy Procedure 4001(a)(3), this order is effective immediately.

Dated this __ day of _____, 2004.

Judge of the Bankruptcy Court